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Sam. Buckley Appellant, against Geo. Littlebury Respondent.

Upon an Appeal from a Decree in the Lord-Mayor of London's Court of Equity, in Favour of the Respondent.

THAT Isaac Littlebury deceased, by his last Will and Testament, dated the 6th of December 1709, gave to his Brother of the half Blood, the Respondent, and to his Wife, Ten Pounds each; and to their Four Children Robert, Catherine, Mary, and Fifty Pounds each, to be paid at their Ages of Twenty Years. And to Sarah Lynch his House-keeper Six hundred Pounds with the Furniture of his House, and as full Possession of every thing therein as he had at that Time, Books excepted.

And by the same Will gave the Appellant, all Sums of Money as were or should be due to him the Testator from the Appellant upon Bond or Note; together with whatsoever might be due to the Testator from Paris, Rome or Lisbon for Goods formerly sent thither; And of his said Will, which he therein declares to have made and written with his own Hand, After mature Deliberation he constituted and appointed the Appellant his Sole Executor. Who has since the Testator's Death proved the said Will.

That the Respondent pretending himself intituled to the Residue and Surplus of the said Testator's Estate, after his Debts Funeral and Legacies paid, exhibited his Bill against the Appellant in the Lord Mayor of London's Court of Equity, to compel him to accompt for such Surplus.

That the Appellant by his Answer to the said Bill insisted, That the Testator did not design the Respondent should have any more or other Part of his said personal Estate than what he had given him by the Will: And that the Testator intended the Appellant, after his Debts and Legacies paid, should have the Benefit of the rest of his Estate. And that the Testator having on mature Deliberation appointed the Appellant his sole Executor, intended him a real Benefit thereby; that the making the Appellant his Executor was a Gift in Law to him of his personal Estate; and that on the Circumstances of the Appellant's Case, the said Respondent was not intituled to the Accompt sought for by his Bill.

That the Cause being at Issue, the Appellant examined his Witnesses, and proved the Matters insisted on by his Answer.

That the said Cause coming to be heard by the said Court the 17th of April last it was ordered and decreed, That the Appellant should accompt with the Respondent for the Residue of the Testator's Estate after all Debts and Legacies are paid, and which is not particularly devised by the Will; and referred it to the Two Attorneys of the Court who are Neuter in the Cause, to take and settle the Accompt, who were to make the Appellant all just Allowances. And if any special Matter did arise in stating the said Accompt, the same was to be reported specially.

Which Decree the Appellant hopes shall be reversed.

I. For that it most manifestly appears by the Proofs taken in the Cause, That the Testator not only intended to exclude the Respondent from any other Share of his personal Estate than what he had expressly given to him and his Family by Will; but also that he did intend by making the Appellant his Executor, that the Appellant should have all the Residue of his personal Estate.

II. That it appears by the Proofs in the Cause, That for many Years before the Death of the Testator there was a very strict and uninterrupted Friendship between the Testator and the Appellant: That the Appellant had been very serviceable to the Testator: And that the Testator always declared to his Friends and Acquaintance, that at his Death he designed to give the Appellant his personal Estate, as some Recompence to him, and as a Mark of the Affection and Esteem he had for him.

III. It is therefore humbly hoped, that since in this Case there is not the least Pretention or Colour of any Fraud or Imposition on the Testator, and that 'tis proved he intended to exclude the Respondent from any further Share of his personal Estate, and that the Appellant at his Death should have his personal Estate, and that the making the Appellant Executor, according to the legal Notion of an Executor, answered the Testator's Intent; that there is no Ground to raise a Trust for the Benefit of the Respondent, to prevent the Testator's Design when he made the Appellant his Executor, and has himself explained what he intended by it.

Sam. Buckley.

Rob. Raymond.
Sam. Mead.